

PROVIDING FOR CONSIDERATION OF H.R. 3231, BARBARA
JORDAN IMMIGRATION REFORM AND ACCOUNTABILITY
ACT OF 2002

APRIL 24, 2002.—Referred to the House Calendar and ordered to be printed

Mr. LINDER, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 396]

The Committee on Rules, having had under consideration House Resolution 396, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 3231, the Barbara Jordan Immigration Reform and Accountability Act of 2002, under a structured rule. The rule provides one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The rule waives all points of order against consideration of the bill.

The rule provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the bill, as amended.

The rule makes in order only those amendments printed in this report. The rule provides that the amendments printed in this report shall be considered only in the order printed, may be offered by a Member designated, shall be considered as read, shall be debatable for the time specified equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

The waiver of all points of order against consideration of the bill includes a waiver of section 303 of the Congressional Budget Act (prohibiting new spending or changes in revenue until a concurrent resolution on the budget has been adopted), because there is a reduction in offsetting receipts for fiscal year 2003. The waiver of all points of order against the committee amendment in the nature of a substitute includes a waiver of clause 4 of rule XXI (prohibiting appropriations on a legislative bill), because unexpended balances are transferred from the old entity (the Immigration and Naturalization Service) to the new entity (the Agency for Immigration Affairs).

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 76

Date: April 24, 2002.

Measure: H.R. 3231.

Motion by: Mr. Hastings of Florida.

Summary of motion: To make in order the amendment offered by Mr. Hastings of Florida, which adjusts the immigration status of certain eligible Haitian aliens by granting them permanent resident status in the U.S. and includes provisions for permanent resident status when the alien is the spouse or child of an alien lawfully admitted as a permanent resident.

Results: Defeated 2 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Pryce—Nay; Diaz-Balart—Yea; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Hastings (FL)—Yea; Dreier—Nay.

SUMMARY OF AMENDMENTS MADE IN ORDER UNDER THE RULE

Sensenbrenner—Manager's Amendment. Permits the Attorney General to "buy out" certain employees to help carry out the strategic restructuring plan. Permits the Attorney General to conduct a demonstration project for five years for the purpose of changing policies or procedures regarding methods for disciplining employees that would result in improved personnel management including discipline for both employee malfeasance and nonfeasance. Requires the directors of the two immigration bureaus to design and implement a managerial rotation program so that managers have experience in all the major functions of their respective bureau and have worked in a field office and service center or border patrol sector. Strikes section 11(e) of the bill. (10 minutes)

Baldwin/Jackson-Lee/Hostettler—Requires that the Office of Children's Affairs, within the Office of Immigration Affairs, develop a plan, to be brought before Congress on how to ensure that unaccompanied alien children are appointed independent legal counsel, consistent with current law. (20 minutes)

Jackson-Lee—Requires the General Accounting Office to conduct a study that examines whether the Bureau of Immigration Services can sustain itself as an agency if it operates with funds derived from fees, and if there is no authorized appropriations language included in the bill. (20 minutes)

Roybal-Allard—Requires the Office of Immigration Statistics to maintain statistics on denials of applications and petitions, and the reasons for those denials. (20 minutes)

Velázquez—Authorizes the Director of the Bureau of Citizenship and Immigration Services to implement innovative pilot initiatives to eliminate the immigration application backlog and prevent the backlog from recurring. Encourage initiatives, such as, increasing or transferring personnel to areas with the greatest backlog, streamlining regulations and paperwork, and providing incentives for efficient and high quality work. (20 minutes)

Issa—Requires that all employees at the new Office of the Associate Attorney General for Immigration Affairs and the two new bureaus (Bureau of Citizenship and Immigration Services and the Bureau of Immigration Enforcement) be considered “excepted service” or at-will employees. (20 minutes)

Lofgren/Cannon—Allows for expedited and simplified procurement of products or services. Provides that this authority lasts until 2004 and a report is required not later than one year after the end of FY2004 concerning the use of these authorities. (20 minutes)

TEXT OF AMENDMENTS MADE IN ORDER UNDER THE RULE

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SENSENBRENNER OF WISCONSIN, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 2, after the item relating to section 10, insert the following (and redesignate succeeding items accordingly):

“Sec. 11. Voluntary separation incentive payments.

“Sec. 12. Authority to conduct a demonstration project relating to disciplinary action.

Page 15, line 15, strike “15(a)” and insert “17(a)”.

Page 17, line 9, strike “15(a)” and insert “17(a)”.

Page 18, line 1, strike “15(a)” and insert “17(a)”.

Page 20, after line 21, insert the following:

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 18(a), the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) REPORT.—Not later than 2 years after the effective date specified in section 17(a), the Attorney General shall submit a report to the Congress on the implementation of such program.

Page 21, line 4, strike “15(a)” and insert “17(a)”.

Page 21, line 13, strike “15(a)” and insert “17(a)”.

Page 25, line 20, strike “15(a)” and insert “17(a)”.

Page 32, after line 20, insert the following:

(4) **MANAGERIAL ROTATION PROGRAM.**—

(A) **IN GENERAL.**—Not later than 1 year after the effective date specified in section 17(a), the Director of the Bureau of Immigration Enforcement shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall, as a condition on further promotion—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one border patrol sector of such bureau.

(B) **REPORT.**—Not later than 2 years after the effective date specified in section 17(a), the Attorney General shall submit a report to the Congress on the implementation of such program.

Page 33, line 3, strike “15(a)” and insert “17(a)”.

Page 37, line 3, strike “15(a)” and insert “17(a)”.

Page 38, line 14, strike “15(a)” and insert “17(a)”.

Page 39, line 16, strike “15(a)” and insert “17(a)”.

Page 40, line 18, strike “15(a)” and insert “17(a)”.

Page 42, line 16, strike “15(a)” and insert “17(a)”.

Page 43, line 6, strike “15(a)” and insert “17(a)”.

Page 45, line 7, strike “15(a)” and insert “17(a)”.

Page 47, after line 9, insert the following:

SEC. 11. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) **DEFINITIONS.**—For purposes of this section—

(1) the term “employee” means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)-(G) of section 663(a)(2) of Public Law 104-208 (5 U.S.C. 5597 note);

(2) the term “covered entity” means—

(A) the Immigration and Naturalization Service;

(B) the Office of Immigration Litigation of the Civil Division;

(C) the Office of the Associate Attorney General for Immigration Affairs;

(D) the Bureau of Immigration Enforcement; and

(E) the Bureau of Citizenship and Immigration Services; and

(3) the term “transfer date” means the date on which the transfer of functions specified under this Act takes effect.

(b) **STRATEGIC RESTRUCTURING PLAN.**—Before obligating any resources for voluntary separation incentive payments under this section, the Attorney General shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

- (1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;
- (2) a summary description of how the authority under this section will be used to help carry out that restructuring; and
- (3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the “appropriate committees of Congress” are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) **AUTHORITY.**—The Attorney General may, to the extent necessary to help carry out the strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

- (1) shall be paid to the employee, in a lump sum, after the employee has separated from service;
- (2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;
- (3) shall be equal to the lesser of—
 - (A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or
 - (B) an amount not to exceed \$25,000, as determined by the Attorney General;
- (4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—
 - (A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or
 - (B) the 3-year period beginning on the date of the enactment of this Act,
 whichever occurs first;
- (5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and
- (6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) **ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.**—

(1) **IN GENERAL.**—In addition to any payments which it is otherwise required to make, the Department of Justice shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) **AMOUNT REQUIRED.**—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) **FIRST METHOD.**—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum

amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) FINAL BASIC PAY DEFINED.—In this subsection, the term “final basic pay” means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee’s final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual’s first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Associate Attorney General for Immigration Affairs (for transfer to the appropriate component of the Department of Justice, if necessary).

(f) EFFECT ON EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) USE OF VOLUNTARY SEPARATIONS.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 12. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(a) IN GENERAL.—The Attorney General may, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) SCOPE.—The demonstration project—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) thereof).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code.

Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITIONS.—In this section—

(1) the term “Attorney General” means the Attorney General or his designee; and

(2) the term “covered entity” has the meaning given such term in section 11(a)(2).

Page 47, line 10, strike “11” and insert “13”.

Page 48, line 21, strike “15(a)” and insert “17(a)”.

Page 51, strike lines 16 through 20.

Page 51, line 21, strike “12” and insert “14”.

Page 53, line 24, strike “11(b)” and insert “13(b)”.

Page 57, line 1, strike “15(a)” and insert “17(a)”.

Page 57, line 23, strike “15(a)” and insert “17(a)”.

Page 58, line 18, strike “15(a)” and insert “17(a)”.

Page 60, line 15, strike “15(a)” and insert “17(a)”.

Page 60, line 20, strike “13” and insert “15”.
 Page 62, line 22, strike “14” and insert “16”.
 Page 63, line 7, strike “15” and insert “17”.
 Page 64, line 13, strike “16” and insert “18”.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BALDWIN OF WISCONSIN, OR REPRESENTATIVE JACKSON-LEE OF TEXAS, OR REPRESENTATIVE HOSTETTLER OF INDIANA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 11, line 14, insert before the semicolon at the end the following: “, including developing a plan to be submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act”.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON-LEE OF TEXAS, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 59, after line 22, insert the following:

(3) REPORT ON FEES.—Not later than 90 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

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4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROYBAL-ALLARD OF CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 38, line 16, insert the following before the period: “, including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such offices and bureaus, and the reasons for such denials, disaggregated by category of denial and application or petition type”.

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5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE VELÁZQUEZ OF NEW YORK, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 20, after line 21, insert the following:

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transfer-

ring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

Page 51, strike lines 16 through 20 and insert the following:

(e) BACKLOG ELIMINATION.—Section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)) is amended by striking “October 17, 2000;” and inserting “the effective date specified in section 15(a) of the Barbara Jordan Immigration Reform and Accountability Act of 2002;”.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ISSA OF CALIFORNIA, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 45, after line 7, insert the following (and redesignate provisions accordingly):

(b) ADDITIONAL PERSONNEL MATTERS.—

(1) POSITIONS IN EXCEPTED SERVICE.—All positions in the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement are positions in the excepted service, as defined by section 2103 of title 5, United States Code.

(2) ELIMINATING RESTRICTIONS ON CERTAIN DISCIPLINARY AND OTHER ADVERSE ACTIONS TAKEN AGAINST EMPLOYEES.—Section 7511(b)(8) of title 5, United States Code, is amended by inserting “the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration Enforcement,” after “the Federal Bureau of Investigation,”.

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LOFGREN OF CALIFORNIA, OR REPRESENTATIVE CANNON OF UTAH, OR A DESIGNEE, DEBATABLE FOR 20 MINUTES

Page 62, after line 21, insert the following:

SEC. 13A. PROCUREMENTS OF INFORMATION TECHNOLOGY TO IMPROVE PERFORMANCE OR EFFICIENCY.

(a) IN GENERAL.—The authorities provided in this section apply to any procurement of information technology products or services, including the management of information technology improvement programs, necessary to improve the performance or efficiency of the Immigration and Naturalization Service, the Office of the Associate Attorney General for Immigration Affairs, the Bureau of Citizenship and Immigration Services, and the Bureau of Immigration Enforcement. Such procurements of information technology products or services may include those necessary to improve the ability of the entities referred to in the preceding sentence to share information with other public agencies and law enforcement authorities authorized to receive such information.

(b) SIMPLIFIED PROCEDURES FOR THE PROCUREMENT OF INFORMATION TECHNOLOGY.—

(1) DEEMING PRODUCTS AND SERVICES AS COMMERCIAL ITEMS.—Any product or service procured by the Attorney General as described in subsection (a) may be deemed to be a commercial item (as defined in section 4(12) of the Office of Fed-

eral Procurement Act (41 U.S.C. 403)) for purposes of sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430) and section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(2) INAPPLICABILITY OF LIMITATION ON USE OF SIMPLIFIED ACQUISITION PROCEDURES.—

(A) IN GENERAL.—The \$5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of products or services deemed to be a commercial item under paragraph (1).

(B) GUIDANCE.—The Attorney General and the Administrator of Federal Procurement Policy shall jointly issue guidance and procedures for the use of simplified acquisition procedures for a purchase of products or services in excess of \$5,000,000 under the authority of this section.

(c) STREAMLINED PROCEDURES FOR THE PROCUREMENT OF INFORMATION TECHNOLOGY.—The Attorney General shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement described in subsection (a), including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(d) NONDISCRIMINATION AGAINST SMALL-BUSINESS CONCERNS.—This section shall be applied in a manner that does not discriminate against small-business concerns (within the meaning of such term as used in the Small Business Act (15 U.S.C. 632 et seq.)) or any type of small-business concern.

(e) PERIOD OF AUTHORITY.—The authorities provided in this section shall apply with respect to any procurement of information technology products or services described in subsection (a) during fiscal years 2002 through 2004.

(f) REVIEW AND REPORT BY COMPTROLLER GENERAL.—Not later than 180 days after the end of fiscal year 2004, the Comptroller General shall submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which products and services acquired using authorities provided under this section con-

tributed to the capacity of the entities referred to in subsection (a) to carry out their missions.

(2) Any recommendations of the Comptroller General taking into account the assessment performed under paragraph (1).

